

other similar words, in close proximity or in some other conspicuous location.

### Subpart F—Articles Found Not Legally Marked

#### § 134.51 Procedure when importation found not legally marked.

(a) *Notice to mark or redeliver.* When articles or containers are found upon examination not to be legally marked, the port director shall notify the importer on Customs Form 4647 to arrange with the port director's office to properly mark the article or containers, or to return all released articles to Customs custody for marking, exportation, or destruction.

(b) *Identification of articles.* When an imported article which is not legally marked is to be exported, destroyed, or marked under Customs supervision, the identity of the imported article shall be established to the satisfaction of the port director.

(c) *Supervision.* Verification of marking, exportation, or destruction of articles found not to be legally marked shall be at the expense of the importer and shall be performed under Customs supervision unless the port director accepts a certificate of marking as provided for in § 134.52 in lieu of marking under Customs supervision.

#### § 134.52 Certificate of marking.

(a) *Applicability.* Port directors may accept certificates of marking supported by samples of articles required to be marked, for which Customs Form 4647 was issued, from importers or from actual owners complying with the provision of § 141.20 of this chapter, to certify that marking of the country of origin on imported articles as required by this part has been accomplished.

(b) *Filing of certificates of marking.* The certificates of marking shall be filed in duplicate with the port director, and a sample of the marked merchandise shall accompany the certificate. The port director may waive the production of the marked sample when he is satisfied that the submission of such sample is impracticable.

(c) *Notice of acceptance.* The port director shall notify the importer or actual owner when the certificate of marking is accepted. Such notice of ac-

ceptance may be granted on the duplicate copy of the certificate of marking by use of a stamped notation of acceptance. The port director is authorized to spot check the marking of articles on which a certificate has been filed. If a spot check is performed, the approved copy of the certificate, if approval is granted, shall be returned to the importer or actual owner after the spot check is completed.

(d) *Filing of false certificate of marking.* If a false certificate of marking is filed with the port director indicating that goods have been properly marked when in fact they have not been so marked, a seizure shall be made or claim for monetary penalty reported under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592). In addition, in cases involving, willful deceit, a criminal case report may be made charging a violation of section 1001, title 18, United States Code, which provides for a fine up to \$10,000 and/or imprisonment up to 5 years for anyone who willfully conceals a material fact or uses any document knowing the same to contain any false or fraudulent statement in connection with any matter within the jurisdiction of an agency of the United States.

(e) *Authority to require physical supervision when deemed necessary.* The port director may require physical supervision of marking as specified in § 134.51(c) in those cases in which he determines that such action is necessary to insure compliance with this part. In such cases the expenses of the Customs officer shall be reimbursed to the Government as provided for in § 134.55.

[T.D. 72-262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 73-175, 38 FR 17447, July 2, 1973; T.D. 84-18, 49 FR 1678, Jan. 13, 1984]

#### § 134.53 Examination packages.

(a) *Site of marking—(1) Customs custody.* Articles (or containers) in examination packages may be marked by the importer at the place where they have been discharged from the importing or bonded carrier or in the public stores.

(2) *Importer's premises or elsewhere.* If it is impracticable to mark the articles (or containers) in examination packages as provided in paragraph (a)(1) of this section, the merchandise may be

turned over to the importer after the amount of duty, estimated to be payable under 19 U.S.C. 1304(f) has been deposited to insure compliance with the marking requirements and the payment of any additional expense which will be incurred on account of Customs supervision. (See §134.55.) The port director may at his discretion accept the bond on Customs Form 301, containing the basic importation and entry bond conditions set forth in §113.62 of this chapter as security for the requirements of 19 U.S.C. 1304 (f) and (g).

(b) *Failure to export, destroy, or properly mark merchandise in examination packages.* If the articles (or containers) in examination packages are not exported, destroyed, or properly marked by the importer within a reasonable time (not more than 30 days), they shall be sent to general-order stores for disposition in accordance with part 127 of this chapter, unless covered by a warehouse entry. If covered by a warehouse entry, they shall be sent to the warehouse containing the rest of the shipment for marking prior to withdrawal.

[T.D. 72-262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 78-99, 43 FR 13061, Mar. 29, 1978; T.D. 84-213, 49 FR 41183, Oct. 19, 1984; T.D. 90-51, 55 FR 28191, July 10, 1990]

#### § 134.54 Articles released from Customs custody.

(a) *Demand for liquidated damages.* If within 30 days from the date of the notice of redelivery, or such additional period as the port director may allow for good cause shown, the importer does not properly mark or redeliver all merchandise previously released to him, the port director shall demand payment of liquidated damages incurred under the bond in an amount equal to the entered value of the articles not properly marked or redelivered.

(b) *Failure to petition for relief.* A written petition addressed to the Commissioner of Customs for relief from the payment of liquidated damages may be filed with the Fines, Penalties, and Forfeitures Officer in accord with part 172 of this chapter.

(c) *Relief from full liquidated damages.* Any relief from the payment of the full liquidated damages incurred will be

contingent upon the deposit of the marking duty required by 19 U.S.C. 1304(f), and the satisfaction of the Fines, Penalties, and Forfeitures Officer that the importer was not guilty of bad faith in permitting the illegally marked articles to be distributed, has been diligent in attempting to secure compliance with the marking requirements, and has attempted by all reasonable means to effect redelivery of the merchandise.

[T.D. 72-262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 79-159, 44 FR 31969, June 4, 1979; T.D. 83-217, 48 FR 48659, Oct. 20, 1983; T.D. 90-51, 55 FR 28191, July 10, 1990; T.D. 99-27, 64 FR 13675, Mar. 22, 1999; T.D. 00-57, 65 FR 53575, Sept. 5, 2000]

#### § 134.55 Compensation of Customs officers and employees.

(a) *Time for which compensation is charged.* The time for which compensation is charged shall include all periods devoted to supervision and all periods during which Customs officers or employees are away from their regular posts of duty by reason of such assignment and for which compensation to such officers and employees is provided for by law.

(b) *Applicability—(1) Official hours.* The compensation of Customs Officers or employees assigned to supervise the exportation, destruction, or marking of articles so as to exempt them from the application of marking duties shall be computed in accordance with the provisions of §§24.16 or 24.17(a)(3), respectively, of this chapter when such supervision is performed during a regularly-scheduled tour of duty.

(2) *Overtime.* When such supervision is performed by a Customs Officer or employee in an overtime status, the compensation with respect to the overtime shall be computed in accordance with the provisions of §24.16 or §24.17, respectively, of this chapter.

(c) *Expenses included.* In formulating charges for expenses pertaining to supervision of exportation, destruction, or marking, there shall be included all expenses of transportation, per diem allowance in lieu of subsistence, and all other expenses incurred by reason of such supervision from the time the Customs officer leaves his official station until he returns thereto.